

CLAIMS: PAYMENT FOR CERTAIN MILITARY SUPPLIES

Convention signed at Washington March 18, 1938

Senate advice and consent to ratification June 13, 1938

Ratified by the Netherlands June 16, 1938

Ratified by the President of the United States July 6, 1938

Ratifications exchanged at Washington August 2, 1938

Entered into force August 2, 1938

Proclaimed by the President of the United States August 15, 1938

*Terminated May 28, 1947*¹

53 Stat. 1564; Treaty Series 935

WHEREAS, in November 1917, the Government of the United States of America requisitioned certain military supplies of the Government of the Netherlands, for which it paid a sum not considered by the Government of the Netherlands to be the full amount to which it was entitled therefor, while the Government of the United States of America considers, on the contrary, that it has paid more than was due,

WHEREAS it has been found impossible to adjust the resulting differences of opinion by diplomacy,

WHEREAS the President of the United States of America and Her Majesty, the Queen of the Netherlands, are desirous of reaching an amicable settlement of their differences, by arbitration if necessary, and that a convention be concluded for that purpose, have named as their plenipotentiaries, that is to say:

The President of the United States of America:

Cordell Hull, Secretary of State of the United States of America, and

Her Majesty, the Queen of the Netherlands:

Jonkheer H. M. van Haersma de With, Envoy Extraordinary and Minister Plenipotentiary of the Netherlands to the United States of America,

Who, having communicated to each other their respective full powers, found in good and due form, have agreed upon the following articles:

¹ Upon entry into force of lend-lease settlement agreement dated May 28, 1947 (TIAS 1750, *post*, p. 188).

ARTICLE I

First. Within six months from the date of the exchange of ratifications hereof the Agent for the Government of the Netherlands shall present to the Agent for the Government of the United States of America a Memorial in which shall be fully set forth:

- (a) the facts on which the Netherlands Government rests its claim against the Government of the United States of America,
- (b) the amount of additional compensation demanded, the principal of which compensation shall in no event exceed the difference between the florins alleged to have been expended by the Netherlands Government and the amount in dollars received by it, leaving to the Arbitrator the question as to whether, in the event of an award, interest should be granted,
- (c) an explanation of the grounds and theory on which the claim is predicated.

Such Memorial shall be accompanied by all the evidence upon which the claim is considered to be based, it being clearly understood that no further evidence may be injected into the case either during the discussions mentioned in Article II below or during the possible adjudication of the claim, except as hereinafter provided.

Second. Within eight months from the date of receipt by the Agent for the Government of the United States of America of such Memorial, he shall present to the Agent for the Government of the Netherlands an Answer to the Memorial, in which shall be fully set forth:

- (a) the facts relied upon by the Government of the United States of America in defense of the claim of the Government of the Netherlands and the facts on which the Government of the United States of America rests any counterclaim,
- (b) the amount of such counterclaim,
- (c) an explanation of the grounds and theory on which the defense and any such counterclaim are predicated.

To such Answer there shall be attached all the evidence upon which the defense of the claim and upon which the counterclaim are considered to be based, and no further evidence shall be injected into the case, either in support or defense, either during the stage of discussions mentioned in Article II below or during possible arbitration, except as hereinafter provided.

Third. With all issues of fact and law thus defined, the Agent for the Government of the Netherlands shall, within six months from the date of the receipt of the Answer, file with the Agent for the Government of the United States of America a written Brief containing all such factual and legal contentions as he may desire to make in support of the claim and in defense of the counterclaim. In such Brief the Agent for the Netherlands Govern-

ment, without being allowed to change the general grounds of the claim as stated in the Memorial, may further explain such grounds in the light of the Answer and the evidence filed therewith and he may file with such Brief only such evidence as is strictly in refutation of the Answer or of the evidence filed with the Answer, but which does not lay the basis of any new grounds for the claim. With the Brief there may be filed also an Answer to the counterclaim, which Answer shall be governed by paragraph "Second" above.

Fourth. Within six months from the date of the receipt of such Brief the Agent for the Government of the United States of America shall file with the Agent for the Government of the Netherlands a Reply Brief containing all such factual and legal contentions as he may desire to make in defense of the claim and in support of the counterclaim. In such Reply Brief the Agent for the Government of the United States of America, without being allowed to change the general grounds of the defense of the claim or the general grounds of the counterclaim, may further explain such grounds in the light of the Brief of the Government of the Netherlands, the Answer to the counterclaim, and the evidence filed therewith, and he may file with such Reply Brief only such evidence as is strictly in refutation of the Brief or the evidence filed therewith, but which does not lay the basis of any new grounds for defense of the claim or any new grounds for the counterclaim.

ARTICLE II

In the event that the two Governments shall be unable to agree upon a disposition of the claim and the counterclaim or upon any portions thereof within the six months next succeeding the delivery of the Reply Brief of the Government of the United States of America, the pleadings thus exchanged shall be referred to arbitration for the decision of any such unsettled questions, it being clearly understood, however, that in no event shall the issues of the claim or of the counterclaim, either factual or legal, or the contentions of either party, as herein submitted to diplomatic discussion, be changed in character, or the written record above described augmented in the event the matter is so referred to arbitration.

ARTICLE III

The issues to be decided shall be those formulated by the pleadings exchanged in pursuance of Article I hereof, or such of those issues as shall not have been previously settled by agreement of the two Governments.

The Arbitrator shall decide such issues in conformity with applicable law.

ARTICLE IV

The arbitral tribunal shall consist of a sole Arbitrator, to be selected by mutual agreement of the two Governments, who shall be a jurist of repute,

familiar with the English language, and who shall not be a national of the Netherlands or of the United States of America.

ARTICLE V

Within thirty days from the termination of the period specified in Article II above, if the diplomatic negotiations referred to therein shall not have resulted in a full settlement of the claim and counterclaim, the pleadings provided for in Article I above shall be delivered to the Arbitrator by means of a joint communication of the two Agents.

ARTICLE VI

As soon as possible after the date of the receipt of the above-mentioned pleadings by the Arbitrator, and not later than four months from that date, he shall convene the parties at a place to be determined by the two Governments for the purpose of hearing such oral arguments by Agents or Counsel, or both, for each Government, as they may desire to make. The conduct of the oral proceedings shall be under the control of the Arbitrator. Authentic minutes of the meetings shall be kept by a Secretary, to be designated by the Arbitrator, and shall be signed by the Arbitrator and the Secretary.

The periods of time mentioned in Articles V and VI hereof may be extended by mutual agreement of the two Governments.

ARTICLE VII

The Arbitrator shall be obligated to render his decision within three months from the date on which the oral arguments close, unless, upon the request of the Arbitrator, the two Governments agree to extend that period.

The decision of the Arbitrator shall be rendered in two signed copies, one of which shall be sent to each Government. It shall state the grounds of the decision and shall be in the English language.

The language of the pleadings and oral proceedings shall be English. All evidence submitted in any language other than English shall be accompanied by a full and correct translation in the English language.

The decision of the Arbitrator shall be accepted as final and binding upon the two Governments.

ARTICLE VIII

Each Government shall pay the expenses of the presentation and conduct of its own case before the Arbitrator, all joint expenses, including the honorarium for the Arbitrator, to be borne by the two Governments in equal proportions.

ARTICLE IX

This convention shall be ratified by the High Contracting Parties and shall take effect immediately upon the exchange of ratifications, which shall take place at Washington as soon as possible.

IN WITNESS WHEREOF, the respective plenipotentiaries have signed this convention and have hereunto affixed their seals.

DONE in duplicate at Washington, this eighteenth day of March, 1938.

CORDELL HULL [SEAL]

H. M. VAN HAERSMA DE WITH [SEAL]